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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 346

VON DER AHE VAN LINES, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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July, 1966

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Von Der Ahe Van Lines, Inc. prays that a writ of certiorari issue to review the judgment of the United States Court of Claims, entered in the above-entitled case on April 15, 1966.

CITATIONS TO OPINION BELOW

The Opinion of the Court of Claims (R. 59-63), printed in Appendix B hereto, *infra*, pp. 13-17, is reported in 358 F.2d 999.

JURISDICTION

The judgment of the Court of Claims was entered on April 15, 1966. (R. 59; p. 13, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1255(1).

QUESTION PRESENTED

Whether a claim against the Government for compensation for transporting Government shipments between points in a foreign country is governed by the three-year statute of limitations set forth in Section 204a of the Interstate Commerce Act, 49 U.S.C. §304a.

STATUTES INVOLVED

The statutory provisions involved are 28 U.S.C. §2501, and Sections 202(a), 203(a)(11), and 204a of the Interstate Commerce Act, 49 U.S.C. §§302(a), 303(a)(11), and 304a. They are printed in Appendix A, *infra*, p. 11.

STATEMENT

In the years 1958, 1959 and 1960, petitioner, a common carrier, transported 364 shipments of household goods for the Department of Defense between points in the United States and points in Germany. (R. 59). A government bill of lading was issued on each shipment covering the entire transportation from origin to destination. (R. 59). After completion of this transportation, petitioner billed respondent, and was paid, on the basis of the rates set forth in Military Rate Tender I.C.C. No. 4, for each of the three legs of this transportation, *viz.*, the land transportation in the United States, the ocean transportation, and the land transportation in Germany. (R. 59-60). Military Rate Tender I.C.C. No. 4 was published

and submitted to the Government by the Movers' & Warehousemen's Association of America, Inc., acting as agent for petitioner and other carriers. (R. 60).

Some time after the completion of this transportation, petitioner discovered that it had underbilled respondent for a portion of this transportation, *viz.*, the land transportation within Germany, and petitioner, accordingly, submitted supplemental bills to respondent covering that portion of the transportation. (R. 60). Respondent, acting through the General Accounting Office, refused to pay petitioner's supplemental bills. (R. 60).

More than three years, but less than six years, after the accrual of its cause of action, petitioner filed suit against respondent in the United States Court of Claims. The jurisdiction of the Court of Claims was invoked under 28 U.S.C. §1491. The statute of limitations generally applicable in the Court of Claims is six years. 28 U.S.C. §2501.

Petitioner's suit in the Court of Claims was solely for the recovery of the freight charges applicable to the transportation performed for respondent within Germany. The case was heard by the Court on petitioner's Motion, and respondent's Cross-Motion, for summary judgment. (R. 60).

The Court of Claims held that petitioner's suit was barred by the three year statute of limitations set forth in Section 204a of the Interstate Commerce Act, 49 U.S.C. §304a. (R. 63). In reaching this conclusion, the Court did not find that this statute applied by its terms to petitioner's claim,[1] but, relying on

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[1] In transporting the shipments involved, petitioner acted as a motor carrier subject to Part II of the Interstate Commerce Act solely with respect to the land transportation in the United States. That portion of the transportation was not involved in the subject suit.

United States v. Francis, 320 F.2d 191 (1963), held that petitioner had "brought itself within [the] purview of the Interstate Commerce Act, including Section 204a" by reason of its participation in Military Rate Tender I.C.C. No. 4, since it was stated in this tender that the rates contained therein were offered to the Government "pursuant to Section 22 of the Interstate Commerce Act, or other appropriate statutory authority." (R. 62). In addition, the Court stated that the failure to apply the three year statute of limitations would result in a "splitting of [petitioner's] cause of action." (R. 63).

REASONS FOR GRANTING THE WRIT

1. In applying the statute of limitations set forth in Section 204a of the Interstate Commerce Act to transportation performed within Germany, the decision of the Court below contravenes the express terms of the Act, the intent of Congress, and decisions of this Court and other Courts.

Section 202(a) of the Interstate Commerce Act, 49 U.S.C. §302(a), provides:

> "The provisions of this part [which encompasses section 204a] apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce. . . ."

Section 203(a)(11) of the Act, 49 U.S.C. §303(a)(11), provides as follows:

> "The term 'foreign commerce' means commerce, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water, (A) between any place in the United States and

> any place in a foreign country, or between places in the United States through a foreign country; or (B) between any place in the United States and any place in a Territory or possession of the United States *insofar as such transportation takes place within the United States.*" (Emphasis added).

(See also letter from the Interstate Commerce Commission to Senate Committee on Interstate and Foreign Commerce, appended to Senate Report No. 2258, 81st Cong., 2nd Sess. (1950)).

First, we submit that it is beyond reasonable doubt that the provisions of the Interstate Commerce Act, and, more particularly, the provisions of Part II (the Motor Carrier Act) apply not to carriers as such, but to *transportation*, and apply *only insofar as such transportation takes place within the boundaries of the United States*. This Court has likewise recognized that the provisions of the Interstate Commerce Act are not to be given extraterritorial effect. *United States v. Pennsylvania Railroad Company*, 323 U.S. 612, 65 S.Ct. 471 (1945).

Second, narrowing our attention to Section 204a, consideration of the language and legislative history of that section makes clear that it was never intended that the statute of limitations contained therein was to apply to claims for freight charges for transportation performed outside of the United States.

Section 204a of the Act, as it presently reads, was enacted as part of the Transportation Act of 1958. (Public Law No. 85-762). The Reports of both the Senate and House Committees on Interstate and Foreign Commerce which accompanied the bill which was enacted, make clear that the three year statute of limitations was to apply only to causes of action

"arising under the Interstate Commerce Act," and that the term "charges" in Section 204a refers only to charges which are subject to the jurisdiction of the Interstate Commerce Commission. (See Senate Report No. 334, 85th Cong., 1st Sess. 4-5 (1957), and House Report No. 2346, 85th Cong., 2nd Sess. 3 (1958)). (See also letter from the Interstate Commerce Commission appended to House Report, *Ibid.*, p. 7).[2]

Further, we point out that although the term "charges" is not specifically defined in Section 204a, the term "overcharges" is defined in Section 204a(5) as follows:

> "(5) The term 'overcharges' as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission."

In the instant case, petitioner's cause of action did not "arise under the Interstate Commerce Act" and the charges which were the subject of suit are not charges subject to the jurisdiction of the Interstate Commerce Commission.

Third, it has been recognized that a carrier subject to the Interstate Commerce Act with respect to some of its operations, may engage in other transportation activities which lie outside the scope of the Act, and that the provisions of the Act do not apply to such other activities, *Kansas City Southern Railway*

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[2] The 1958 Amendment extended the limitations period in Section 204a from two to three years. The legislative history of the prior two-year statute also makes clear, however, that this limitations provision was intended to apply only to claims for freight charges which are subject to the Interstate Commerce Act. (See Senate Report No. 83, 81st Cong., 1st Sess. 1-2 (1949), and House Report No. 766, 81st Cong., 1st Sess. (1949)).

Company v. United States, 282 U.S. 760, 764, 51 S.Ct. 304, 306 (1931). More specifically, it has also been held that the limitations provisions contained in the Interstate Commerce Act do not apply to a suit by a carrier subject to the Act for the recovery of transportation charges which are not subject to the Act. *Thompson, Trustee, Great Northern R.R. Co. v. Millwhite Company*, 292 S.W. 2d 148 (1956), *McMahone v. Republic Van & Storage Co.*, 382 Pac. 2nd 875 (1963). In the *Thompson* case, a railroad (subject to Part I of the Act) brought suit for the recovery of both interstate and intrastate freight charges. The Court held that the limitation provision of the Interstate Commerce Act applied to the claim for interstate freight charges, but not to the claim for intrastate freight charges.

As noted above, the Court below did not hold that Section 204a applied, by its terms, to petitioner's claim, but that petitioner "brought itself within [the] purview of the Interstate Commerce Act" by reason of the statement in the applicable rate tender that the rates contained therein were offered "pursuant to Section 22 of the Interstate Commerce Act, or other appropriate statutory authority." (R. 62).

We submit that the provisions of the Interstate Commerce Act either apply or do not apply to specified transportation, and that one cannot, voluntarily or by agreement, either bring one's self or one's activities within the scope of the Act, or remove one's self or one's activities from the coverage of the Act. Were the situation otherwise, the regulatory scheme established by the Interstate Commerce Act would be readily nullified.

Further, we point out that the reference in petitioner's Rate Tender to "Section 22 of the Interstate Commerce Act or other appropriate statutory author-

ity" is no more than a standard, "boiler-plate" reference which appears in almost all rate tenders submitted to the Government, and that this statement is made because *some* of the charges contained in these tenders *are* submitted "pursuant to Section 22" of the Act.[3] This statement in petitioner's rate tender cannot, however, be construed to expand the scope of the Interstate Commerce Act so as to subject to the provisions of that Act transportation, or charges for transportation, to which the Act does not apply. Stated differently, even if petitioner could be considered to have "incorporated by reference" the provisions of the Interstate Commerce Act, petitioner could, at most, be bound by the provisions of the Act, and, as discussed above, the Act does not apply to transportation outside the United States, and Section 204a of the Act, even assuming that it had been *expressly* and *specifically* incorporated, does not apply to claims for freight charges covering such transportation.

One additional matter in the opinion of the Court below requires comment, *viz.*, the Court's statement that the failure to apply the three year statute of limitations would result in "the splitting of [petitioner's] cause of action." (R. 63). With all due respect, we submit that the Court grievously erred in so stating. As the Court noted, the shipments which are the subject of this suit each moved on a single Government bill of lading. (R. 59). There was thus a single contract of carriage on each shipment. If, therefore, a carrier were to bring suit within three years for the transportation charges applicable to the

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[3] Thus, in the instant case, there is no question that the charges covering the transportation within the United States were so-called "Section 22 quotations," and were subject to the provisions of the Act.

portion of the transportation performed in the United States, and then, after the three-year period but within six years, attempt to bring a second suit for the recovery of freight charges applicable to the transportation performed outside the United States (as the Court hypothesized), such second suit *would be foreclosed* simply as a matter of *res judicata*. A single contract gives rise to a single cause of action, and successive suits cannot be maintained on the same contract. (See, generally, 1 Corpus Juris. Sec. §102). This, however, has nothing whatever to do with the statute of limitations.

2. The decision below limits the jurisdiction of the Court of Claims, involves the interpretation of a federal statute which has not been authoritatively interpreted by this Court, and could have an effect upon claims arising on all international traffic transported for respondent. In the latter connection, we respectfully advise the Court that there are in excess of sixty cases *now* pending in the Court of Claims which may be affected by this decision.

3. Lastly, the Court of Claims was the Court of first instance in this case, and unless this petition is granted, a decision (which we are convinced is wrong) which potentially affects thousands of claims would be allowed to stand without the benefit of consideration or review by any other tribunal.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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July, 1966

APPENDIX A — STATUTES INVOLVED

A. General Statute of Limitations in U.S. Court of Claims, 28 U.S.C. §2501:

"Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues."

B. Pertinent provisions of Interstate Commerce Act:

Section 202(a), 49 U.S.C. §302(a):

"The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreigh commerce . . ."

Section 203(a)(11), 49 U.S.C. §303(a)(11):

"The term 'foreign commerce' means commerce, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water, (A) between any place in the United States and any place in a foreign country, or between places in the United States through a foreign country; or (B) between any place in the United States and any place in a Territory or possession of the United States insofar as such transportation takes place within the United States."

Section 204a, 49 U.S.C. §304a:

"(1) All actions at law by common carriers by motor vehicle subject to this part for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

* * *

"(5) The term 'overcharges' as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

* * *

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court or by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U.S.C. 66), whichever is later."

APPENDIX B

In the United States Court of Claims

No. 139–64

(Decided April 15, 1966)

VON DER AHE VAN LINES, INC. v. THE UNITED STATES

Francis Forti, attorney of record, for plaintiff.
John C. Ranney, with whom was *Assistant Attorney General John W. Douglas*, for defendant.

Before COWEN, *Chief Judge;* JONES, *Senior Judge;* LARAMORE, DAVIS, and COLLINS, *Judges.*

ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

COWEN, *Chief Judge*, delivered the opinion of the court:

In the years 1958, 1959, and 1960 plaintiff, a common carrier by motor vehicle, transported some 364 shipments of household goods for the defendant between points in the United States and Germany. A Government bill of lading was issued on each shipment to cover the complete service from origin to destination, including the land transportation in the United States, the crossing of the Atlantic Ocean, and the land transportation in Germany. After completion of the service, plaintiff submitted its bills for payment on Standard Form 1113, entitled Public Voucher For Transportation Charges. The bills were paid prior to audit, pursuant to Section 322 of the Transportation Act of 1940, 54 Stat. 955, as amended, 49 U.S.C. § 66, on the basis of the rates for each

of the three legs of the trips set forth in Military Rate Tender I.C.C. No. 4.

Payment was completed on the vouchers on September 17, 1959. More than 3 years after plaintiff had received the payments, it submitted to the General Accounting Office claims for undercharges on that portion of the transportation which moved within Germany. Plaintiff stated that in submitting its original bills, it had used an incorrect rate for the movements in Germany. The General Accounting Office denied the claims on the basis of that part of Section 322 of the Transportation Act of 1940 which states that "every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years * * * "

Military Rate Tender I.C.C. No. 4, in accordance with which plaintiff offered its services and computed its charges, contains rates on shipments of household goods between points within the United States and points within the Republic of Germany. The rate tender was published and offered to the Government by the Movers and Warehousemen's Association of America, Inc., acting as agent for plaintiff and other carriers.

Defendant has countered plaintiff's motion for summary judgment with a cross-motion for summary judgment in which defendant contends that plaintiff's claims are barred by the 3-year statute of limitations set forth in Section 204a of the Interstate Commerce Act, 49 U.S.C. § 304a (1958 ed.). This section provides in pertinent part as follows:

> (1) All actions at law by common carriers by motor vehicle subject to this chapter for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.
>
> * * * * *
>
> (7) The provisions of this section shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this chapter: *Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of

> limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 66 of this title, whichever is later.

In its petition filed in this court plaintiff alleges that it is a common carrier by highway of property in interstate commerce. If plaintiff had sued to recover freight charges for that portion of the carriage which took place within the United States, it is clear that the above-quoted 3-year statute of limitations would require dismissal of the action. However, plaintiff asserts that, since the transportation for which recovery is sought occurred wholly in Germany, Section 204a of the Interstate Commerce Act is not applicable and that plaintiff's suit is governed by the 6-year statute of limitations, 28 U.S.C. § 2501. Plaintiff has cited a number of cases for the proposition that the Interstate Commerce Commission has no authority to regulate transportation in foreign countries. If that were the only question presented to us, we might agree with plaintiff's position. However, the narrow issue to be decided here is whether under the particular facts of this case, plaintiff has subjected itself to the time limitation provisions of the Interstate Commerce Act as contained in Section 204a thereof.

A related and similar question was considered by the Ninth Circuit in *United States* v. *Francis*, 320 F. 2d 191 (9th Cir. 1963). In that case the United States sued to recover overcharges on shipments which were transported on Government bills of lading by a motor carrier between points solely within the State of California. The carrier defended on the ground that the United States could not bring an action for restitution under Section 322 of the Transportation Act of 1940, because the shipments were all intrastate and that in performing the transportation, he was not subject to the Interstate Commerce Act. However, the carrier was a party to a quotation of rates tendered to the Government under the authority of Section 22 of the Interstate Commerce Act, 49 U.S.C. § 22, and the freight was transported pursuant to the terms of the quotation. In resolving the question, the court said at page 195:

> By becoming a party to the Loretz [Section 22] Quotation, appellee must be considered to be within the meaning of the Section 322 phrase "common carrier subject to the Interstate Commerce Act." Appellee, having voluntarily become bound as a carrier "subject to the Interstate Commerce Act," cannot now claim it is not so bound. We hold he has waived any claim he is excluded under Section 322.

The rationale of the decision is not fully set forth in the court's opinion, and factual situations may arise in which we would hold that the rule announced in the quoted portion of the opinion does not apply. However, we have concluded that the principle stated in *Francis* is controlling in this case, because of the following facts:

(1) Each shipment was made on a through bill of lading covering the complete movement of household goods between points in the United States and points in the Republic of Germany. Plaintiff was shown as both the origin and the destination carrier on each bill of lading.

(2) Each of the Government bills of lading refers to Movers and Warehousemen's Association of America, Inc., Military Rate Tender No. 4.

(3) Military Rate Tender I.C.C. No. 4, in effect at the time the shipments moved, is published by plaintiff's agent and contains rates on shipments of household goods between points within the United States and points in the Republic of Germany. The rate tender shows that the participating carriers, including plaintiff, quoted and offered to the Government specified rates and charges for such transportation services "pursuant to Section 22 of the Interstate Commerce Act, or other appropriate statutory authority."

By this combination of factual circumstances, we think that plaintiff brought itself within purview of the Interstate Commerce Act, including Section 204a, 49 U.S.C. § 304a. The bill of lading is the contract of carriage upon which the carrier's action is based. *St. Louis I. Mt. and Southern Ry.* v. *Starbird*, 243 U.S. 592 (1917); *Johnson Motor Transport* v. *United States*, 137 Ct. Cl. 892, 896, 149 F. Supp. 175 (1957); *United States* v. *Louisville & N. R.R.*, 221 F. 2d 698 (6th Cir. 1955). It is a well accepted general rule that a single cause of action or an entire claim or demand based upon a contract

cannot be split or divided for the purpose of maintaining separate suits on the various individual parts, nor can a party divide the grounds of recovery and maintain successive actions for the cause of action thereon. *United States* v. *Pan-American Petroleum Co.*, 55 F. 2d 753 (9th Cir. 1932), *cert. denied*, 287 U.S. 612 (1932); *Campbell* v. *Village of Silver Bay, Minnesota*, 315 F. 2d 568 (8th Cir. 1963). While there are recognized exceptions to this rule, we think its purpose is served in this case. Plaintiff's claim grows out of the same facts on a single contract for a unified carriage between the same parties. Plaintiff, who was a common carrier by motor vehicle in interstate commerce, undertook to transport the household goods from origin to destination pursuant to a Section 22 Quotation, and the fact that it may have rendered a portion of the transportation services as the agent of another does not operate to change plaintiff's status. *United States* v. *Smith*, 215 F. 2d 217 (6th Cir. 1954).

The adoption of plaintiff's position would require the splitting of its cause of action and the application of two statutes of limitations to a single contract of carriage. Thus, under plaintiff's view it could bring suit against the United States upon the bills of lading for undercharges on freight transported within the United States within 3 years from the date the cause of action accrued, and then wait almost 3 years more to file suit on the same bills of lading for that portion of the transportation services performed within Germany. Under the facts recited above, we therefore conclude that plaintiff's cause of action is barred by the provisions of Section 204a of the Interstate Commerce Act, 49 U.S.C. § 304a. Accordingly, plaintiff's motion for summary judgment is denied, defendant's cross-motion for summary judgment is granted, and plaintiff's petition is dismissed.

In view of the foregoing disposition of this action, we do not reach, nor have we considered defendant's broad position that 49 U.S.C. § 304a applies to all actions at law brought by common carriers by motor vehicle for the recovery of freight charges against the Government.